9

From Industrial Arbitration to Workplace Mediation: Changing Approaches to Dispute Resolution

Joellen Riley[*]

A century ago, when the first Australian federal industrial legislation was drafted,[1] the notion of 'dispute resolution' bore a very different complexion than it bears in contemporary legal practice. Then, particularly in the context of industrial disputation, 'dispute resolution' connoted hairy-chested contests over industrial rights, generally waged between trade unions and employers. Isaac and Macintyre have written the story of Australian conciliation and arbitration as one 'rich in drama involving strikes, lockouts, imprisonment of union officials' and 'noisy protests in court rooms'.[2] Ask a twenty-first century Australian law student to describe 'dispute resolution', however, and you will hear praise of modern, non-litigious methods for resolving grievances in ways which empower 'ordinary people' to cooperate in the determination of their own problems, by methods 'perceived to be responsive to the needs of the parties, consensual and preserving of relationships as well as being quick and inexpensive'.[3]

Ironically, the early conciliation and arbitration tribunals could be regarded as the forebears of the modern alternative dispute resolution (ADR) industry. They were specifically empowered to provide quick and informal dispute resolution processes, more appropriate to the needs of

* The author acknowledges the benefit of a number of conversations with Commissioner Greg Smith of the Australian Industrial Relations Commission (AIRC) in the preparation of this paper. All views expressed here are, however, entirely her own.

1 Conciliation and Arbitration Act 1904.

2 J Isaac and S Macintyre, 'Introduction' in J Isaac and S Macintyre (eds), *The New Province for Law and Order: 100 Years of Australian Conciliation and Arbitration*, Cambridge University Press, Melbourne, 2004, p 1.

3 H Astor and C Chinkin, *Dispute Resolution in Australia*, 2nd ed, Lexis Nexis Butterworths, Sydney, 2002, p 4.